Testimony of David Alberswerth

Mr. Chairman and Members of the Committee, thank you for the opportunity to present the views of The Wilderness Society on the subject of oil and gas development on onshore federal lands. My name is David Alberswerth, and I am The Wilderness Society's Bureau of Land Management Program Director. My statement will focus on the Bureau of Land Management's onshore oil and gas program affecting the public lands of the Rocky Mountain States.

The vast majority of federal oil and gas resources within the Rocky Mountain Overthrust Belt states is currently available for leasing and development, and has been so for a long time. Despite industry claims to the contrary, and earlier assertions by the Bush Administration, the Department of the Interior's recently released "EPCA" report concludes that 85 percent of the "technically recoverable" oil (3.3 Bbbl), and 88 percent of the "technically recoverable" natural gas resources (122.6 TCF) underlying federal lands in this region of the country are currently available for leasing and development. Interestingly, if one includes the EPCA estimates of "technically recoverable" oil and natural gas from non-federal lands in the analysis, only 7 percent of natural gas and about 9 percent of oil within the study region are unavailable for development (see attachment).1 The inescapable conclusion to be drawn from the most recent data available is that over 90 percent of the region's oil and gas resources, on federal and non-federal lands, are available for leasing and development.

Oil and especially natural gas development is a robust activity on federal lands within the Rocky Mountain West. For example, according to the Bureau of Land Management, there are currently over 94,000 producing oil and gas wells on the public lands that it manages. In fiscal year 2001, the BLM permitted 4,850 drilling projects on BLM lands, up from 3,400 permits issued in fiscal year 2000 (see attachment). 2 The recently released Wyoming Powder River Basin environmental impact statement projects the development of over 50,000 new coal bed methane wells within the Powder River Basin within the next 10 years.3 The new "reasonably foreseeable development scenario" published for the BLM's new draft Farmington Resource Management Plan projects the development of 9,970 new wells during the next twenty years within that planning area, which currently has over 19,000 producing oil and gas wells.4 During the Clinton Administration, leases were issued on 26.4 million acres and 19,310 drilling permits were issued (see attachment).

These facts and trends, and the recent findings of the EPCA report, contradict claims by industry advocates that there are too many "restrictions" or "impediments" that inhibit industry "access" to oil and gas resources on public lands. For example, the Bush Administration's "National Energy Policy" claimed that, "…about 40 percent of the natural gas resources on federal land in the Rocky Mountain region have been placed off-limits" to development.5 However, the EPCA report concludes that about 12 percent of federal natural gas resources in the region is off-limits to leasing and development.6

Viewed from another perspective, the 15.9 TCF identified in the EPCA report as unavailable for development is about 1 percent of the 1,466 TCF "gas resource base" within the continental U.S. (exclusive of Alaska) identified by the National Petroleum Council in its 1999 study, Natural Gas: Meeting the Challenges of the Nation's Growing Natural Gas Demand.7

Because it is now established from the Bush Administration's own analysis of federal onshore resources that most publicly-owned natural gas and oil is available for development, the industry's lobbying focus may shift to that category of lands identified in the EPCA report that is "Available for Leasing With Restrictions on Oil and Gas operations Beyond Standard Stipulations." Just what is the nature of these "special and seasonal stipulations" of such concern to industry?

This category of available lands often encompasses areas where evidence indicates the presence of sensitive wildlife habitats, such as elk calving or winter range areas, or big game migration corridors, or sage grouse leks, or critical raptor habitat where oil and gas activities at certain times of the year could pose severe threats to wildlife. In such cases, the BLM may require that operations only occur at certain times of the year, when such areas are not in use by certain wildlife species. In some cases, the BLM imposes “No Surface Occupancy” leases, whereby the lessee is required to access the oil and gas resource from off-site. Such “NSO” stipulations are also designed to protect wildlife habitats, while making the resource available for extraction. The types of special stipulations imposed to protect environmental values can be summarized as follows:

"Standard Stipulations" -- These are provisions within standard BLM oil and

gas leases regarding the conduct of operations or conditions of approval given

at the permitting stage, such as: prohibitions against surface occupancy

within 500 feet of surface water and or riparian areas; on slopes exceeding 25

percent gradient; construction when soil is saturated, or within 1/4 mile of an

occupied dwelling. These are generally applied to all BLM oil and gas leases,

regardless of special circumstances.

"Seasonal" or other "Special" Stipulations -- "Seasonal Stipulations" prohibit

mineral exploration and/or development activities for specific periods

of time, for example sage grouse strutting areas when being used, hawk nesting areas, or on calving habitat for wild ungulate species. These are often imposed at the request of state wildlife officials, as well as in compliance

with U.S. Fish and Wildlife Service requests to protect sensitive species.

"No Surface Occupancy" -- NSO leases prohibit operations directly on the

surface overlaying a leased federal tract. This is usually done to protect

some other resource that may be in conflict with surface oil and gas

operations, for example, underground mining operations, archeological sites, caves, steep slopes, campsites, or important wildlife habitat. These leases may be accessed from another location via directional drilling.

Representatives of the oil and gas industry have voiced criticism regarding why such provisions are imposed on federal oil and gas leases at all, or why certain areas of our public lands and national forests are off-limits entirely to oil and gas development, when in their view energy extraction is such an important activity on federal lands. The answer is that the federal land management agencies' primary obligation is not to satisfy the wants and desires of the oil and gas industry. Instead, they are statutorily mandated to balance the wishes of the oil and gas industry with the protection of a multitude of environmental, ecological, scientific, and cultural values harbored by our public lands.

For example, Congress mandated in the Federal Land Policy and Management Act that the Secretary of the Interior manage the public lands,

"…in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use." (43 U.S.C. 1701(a)(8))

Similar statutory requirements pertain to the National Forests. The imposition of special, seasonal, or NSO stipulations in certain circumstances is the result of a policy developed in the 1980s by the BLM to balance the industry’s desire for access to oil and gas deposits with the BLM’s responsibility to manage the other resources and values enumerated in FLPMA. Although characterized as "burdensome" by some industry representatives, these stipulations can -- and frequently are -- waived at an operator's request.

Attached to my statement is a table published (but no longer available) on the Rawlins (Wyoming) BLM Field Office website. This area is subject to significant oil and gas activity. The table indicates that that for fiscal year 2001, of 128 requests for waivers from protective stipulations recorded, the BLM granted 103, or 80 percent of them (A few waivers granted were for activities other than oil and gas activities.). Similar data from the Pindedale Field Office for 2001 indicates that of 40 requests for stipulation waivers, 31 were granted, or 77 percent. During the 2002-2003 season, of 52 requests for waivers received by the Pinedale Field Office, 45 were granted, or 86 percent. What the data from these two BLM Field Offices clearly indicate is that wildlife stipulations on oil and gas leases are usually waived at the request of the operator to accommodate activities not otherwise allowed during the period of the seasonal restriction, or within an area ordinarily set aside from oil and gas activities.

Instead of focusing on instances where the BLM may not have issued a particular drilling permit application in a timely manner satisfactory to the operator, it seems to us that the frequency of stipulation waivers in areas where there is intense development raises the question as to the effectiveness of stipulations as a means of protecting key environmental values.

For example, we know that sage grouse populations in the U.S. are in severe decline, in fact, their distribution has declined by about 50%, while estimated population size has declined by about 90%. As a population they are very sensitive to habitat fragmentation. Given the frequency of the waivers indicated on the attachment for sage grouse habitat, it seems to us the question we should be asking is not, "Why does the industry have to put up with seasonal restrictions for sage grouse habitat?" Instead, we should ask, "What impacts are occurring to sage grouse populations as a consequence of the BLM's frequent waiver of stipulations designed for their protection?"

Finally, in our view it is entirely appropriate that some federal lands should be off-limits to oil and gas leasing and development. Lands identified as off-limits in the EPCA Report include National Parks, National Monuments, designated Wilderness Areas, and Wilderness Study Areas. One specific area that has been placed administratively off-limits to future leasing and has drawn especially harsh criticism from the oil and gas industry is the Rocky Mountain Front area of the Lewis and Clark National Forest in Montana. In 1997, following an extensive public involvement process, the Forest Service adopted a Forest Plan amendment for approximately 356,000 acres of the Front that effectively prohibited leasing for the duration of the Plan amendment. The area in question - the spectacular and dramatic uplift of the Rocky Mountains from the Northern Great Plains - is a region of remarkable scenic beauty, and harbors a multitude of extraordinary wildlife, scenic, and recreational values. It has been the focus of preservation efforts by Federal, State and private entities for almost a century.

The Lewis and Clark National Forest Plan adopted in 1986 emphasized management of the area in question for its special wildlife, recreation, and scenic attributes. The Plan Amendment adopted in 1997 implemented that earlier management direction by prohibiting oil and gas leasing for the next 10-15 years. It should also be noted that the 1997 Plan Amendment enjoys widespread support within the State of Montana. Although the oil and gas industry has attempted to characterize the Forest Supervisor's decision as essentially "arbitrary and capricious," the Supervisor's decision has been upheld upon administrative appeal and at the District and Appeals Court levels. As the Bush Administration pointed out in its brief to the Supreme Court in opposition to the industry's request that the Supreme Court review the Court of Appeals decision, "…the Record of Decision approving the [1986] Forest Plan acknowledged 'people's apprehension over the effects of oil and gas development and their desire for the land to remain unchanged,' and concluded that 'management of the Rocky Mountain Division should emphasize wildlife, recreation, and scenic values.'" (Brief for the Federal Respondent in Opposition at 5, Independent Petroleum Association for America v. U.S., 279 F. 3d 1036 (9th Cir.), cert denied, 123 S. Ct. 869 (2003).)

In conclusion, in light of the new information from the Department of the Interior's EPCA study that most federal oil and gas resources within the Rocky Mountain region are available for leasing and development, the question policy-makers should be asking is not, “Is too much federal oil and gas unavailable for leasing and development?" Instead, we should be asking such questions as: Given the extensive availability of our publicly-owned onshore oil and gas resources for development, have we adequately protected the scenic, ecological, environmental, air and water resources, wildlife habitat, and wilderness values of our public lands and national forests? Are surface owners with split estate lands being treated fairly when it comes to coalbed methane development? Are we being careful enough to protect the precious surface and groundwater resources of the rural communities where the coalbed methane boom is in full swing? Should we be more careful in waiving leasing provisions designed to protect wildlife resources, especially when it comes to declining species, such as sage grouse? And, are reclamation bonds imposed upon operators adequate to the task of assuring post-operation clean-ups?

Thank you again for this opportunity to present our views.

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1 BLM, January, 2003, Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and Reserves, etc…, pp. xii-xiii, xv.

2 BLM, Budget Justifications and Annual Performance Plan, Fiscal Year 2003, pp. III-116 through 121.

3 BLM, Final Environmental Impact Statement and Proposed Plan Amendment for the Powder River Basin Oil and Gas Project, Volume 3, Appendix A, Reasonably Foreseeable Development Scenario for Oil and Gas Development in the Buffalo Field Office Area, Wyoming, February 2001, p. 2.

4 Engler, Thomas W., et.al., BLM, July 2, 2001, Oil and Gas Resource Development for San Juan Basin, New Mexico...

5 National Energy Policy: Report of the National Energy Policy Development Group, May 2001, p. 5-10.

6 Op. cit., p. 3-5.

7 Domestic Petroleum Council, December, 1999, Natural Gas - Meeting the Challenges of the Nation's Growing Natural Gas Demand, Volume I., Summary Report, pp.7-8.